# **Saint Paul Planning Commission City Hall Conference Center** 15 Kellogg Boulevard West

# Minutes May 7, 2010

A meeting of the Planning Commission of the City of Saint Paul was held Friday, May 7, 2010, at 8:30 a.m. in the Conference Center of City Hall.

**Commissioners** Mmes. Donnelly-Cohen, Merrigan, Porter, Smitten, Thao, Wencl; and **Present:** 

Messrs. Alton, Commers, Connolly, Fernandez, Gelgelu, Kramer, Nelson,

Schertler, Spaulding, Ward, and Wickiser.

**Commissioners** 

**Also Present:** 

Absent:

Mmes. \*Halverson, \*Young, and Mr. \*Goodlow

Donna Drummond, Planning Director; Peter Warner, City Attorney's Office,

Tom Beach, Department of Safety and Inspections, Joan Trulsen, Lucy Thompson, Allan Torstenson, Patricia James, Penelope Simison, Luis Pereira,

Josh Williams, Sarah Zorn, and Sonja Butler, Department of Planning and

Economic Development staff.

### I. Approval of minutes April 23, 2010.

\*Excused

MOTION: Commissioner Nelson moved approval of the minutes of April 23, 2010. Commissioner Ward seconded the motion. The motion carried unanimously on a voice vote.

#### II. **Chair's Announcements**

Chair Donnelly-Cohen announced that 29 applications for the Transportation Committee were received from community members. Chair Donnelly-Cohen and staff will be meeting with Councilmember Stark in the coming weeks to go over the applications and make a decision.

### III. **Planning Director's Announcements**

Donna Drummond announced that the Phalen Keller Regional Park Master Plan open house has been rescheduled to Thursday, May 20, 2010 between 5 and 8 p.m., 1600 Phalen Drive at the Park Picnic Pavilion.

At City Council last Wednesday, the bicycle parking code amendments went through final adoption, the Bike Walk Central Corridor Action Plan was approved, and the parking code amendments public hearing was held. There were some comments, but it looks like it's on the way to final adoption.

# **IV.** Zoning Committee

**SITE PLAN REVIEW** – List of current applications. (*Tom Beach*, 651/266-9086)

One item will come before the Site Plan Review Committee on May 11, 2010. The West Side Flats, a 168 unit apartment building with retail and covered parking at 84 Wabasha Street.

### **NEW BUSINESS**

#10-221-660 T-Mobile (1390 Larpenteur) – Conditional Use Permit for a wireless communications antenna on a 75 ft monopole. 1390 Larpenteur Avenue East between Clarence and Birmingham. (*Sarah Zorn*, 651/266-6570)

Commissioner Commers said that the basis for his opposition is that, in his opinion, there is insufficient information to make all the findings required for the conditional use permit.

<u>MOTION</u>: Commissioner Kramer moved the Zoning Committee's recommendation to approve the conditional use permit subject to additional conditions. The motion carried 15-2 (Commers, Spaulding) on a voice vote.

#10-221-100 St. Paul Port Authority – Rezoning from B2 Community Business to I1 Industrial. 955 Seminary Avenue, 974 Hubbard Avenue and 991 Milton Street North, NE corner at Chatsworth. (*Luis Pereira*, 651/266-6591)

Commissioner Nelson asked if there was an issue with parking in a zoning district that's different from the parcel that is using that parking.

Patricia James, PED staff, explained that the zoning code does not permit parking in a lot that has a more restrictive zoning classification than the use, but it does permit a use to have parking in a less restrictive zoning district, and I1 is less restrictive then B2. If it were an I1 use that wanted to use the B2 parking that would not be permitted.

Upon a question by Commissioner Spaulding, Luis Pereira said that District 7 reported on a meeting a few days before the Zoning Committee meeting. Nine residents were in support and 6 were in opposition, so the District 7 Community Council recommended approval.

Upon a question by Commissioner Fernandez, Mr. Pereira said that the District 7 response noted three (3) items as cons. One was that there were issues that needed to be worked out with the parking easement; second, there were compatibility issues between the potential light industrial business and the rest of the retail shopping center; and third, the two groups needed to work out parking issues before a recommendation was made.

Commissioner Kramer added that at the Zoning Committee meeting there was testimony from the same party, a Mr. Keane, who is representing the remaining portion of the shopping center. He expressed concern on a couple of issues that the Zoning Committee did discuss. One of the issues was that a portion of the parcel being rezoned includes a vacated street. The Committee determined that, while the rezoning affected the parcel, it did not change the parking situation. Another concern was what uses would take place in the industrial district. The Port Authority has covenants on their properties that regulate the land uses and building appearance issues, so a

number of the light industrial uses that would normally be permitted in an I1 district are not allowed.

Commissioner Alton said that the adjacent property owner objected also and recently filed a lawsuit. But, the basis for the objection was to get all of these issues resolved before the rezoning is considered, and the committee did not see that as necessary. The question simply is, should the property be rezoned, and the Committee decided that was a reasonable request.

<u>MOTION</u>: Commissioner Kramer moved the Zoning Committee's recommendation to approve the rezoning. The motion carried unanimously on a voice vote.

#10-222-535 Walgreens – Site plan review for a new Walgreens and two smaller commercial buildings. 2101 Ford Parkway. (*Tom Beach*, 651/266-9086)

<u>MOTION</u>: Commissioner Kramer moved the Zoning Committee's recommendation to approve the site plan review. The motion carried unanimously on a voice vote.

Commissioner Kramer announced the items on the agenda for the next Zoning Committee meeting on Thursday, May 13, 2010.

# V. Comprehensive Planning Committee

Commissioner Commers announced that the next meeting is on Tuesday, May 18, 2010.

# VI. Neighborhood Planning Committee

<u>District del Sol Zoning Study</u> – Approve resolution recommending property rezonings to the Mayor and City Council. (*Lucy Thompson*, 651/266-6578)

Commissioner Wencl moved on behalf of the Neighborhood Planning Committee to recommend approval of the resolution and forward to the Mayor and City Council.

Commissioner Ward seconded the motion. The motion carried unanimously on a voice vote.

<u>Fitzgerald Park Precinct Plan Area Plan Summary</u> – Recommendation to release the draft for public review and set a public hearing for June 18, 2010. (*Lucy Thompson*, 651/266-6578)

Lucy Thompson, PED staff, presented the proposed amendments to the Fitzgerald Park Precinct Plan Area Plan Summary, being forwarded by City staff, the Design Center and the CapitolRiver Council. The Fitzgerald Park Precinct Plan Area Plan Summary was first adopted in 2006. Cedar Street will carry LRT through the neighborhood, and a station will be located at 10<sup>th</sup>/Cedar. Rather than prepare a separate station area plan for the 10<sup>th</sup>/Cedar station, amendments are being proposed to the existing precinct plan to take full advantage of LRT in the neighborhood. Ms. Thompson explained the three key ideas represented in the proposed amendments: 1) the strengthening of 10<sup>th</sup> Street as both a "park street" and pedestrian/bicycle connection to the LRT station; 2) an urban room at the LRT station – a high quality public space capable of integrating the needs of a wide range of users, and acting as a gateway into both the precinct and downtown; 3) a "Mobility Enhancement Area" where streetscape enhancements, wayfinding and increased landscaping will facilitate the flow of pedestrians and cyclists to and from LRT, improve the appearance of this important gateway to downtown and elevate the experience of using transit.

Commissioner Spaulding commented that he is glad to see the attention to detail at this station. With the planned amenities, history and sense of place, Pedro Park and the Penfield project, this station area will become a truly active and vibrant node in the north part of downtown. He thanked everyone involved for the good work.

<u>MOTION</u>: On behalf of the Neighborhood Planning Committee, Commissioner Wencl moved to release the draft for public review and set a public hearing on June 18, 2010. The motion carried unanimously on a voice vote.

<u>Carondelet Village Redevelopment Plan</u> – Approve resolution finding the redevelopment plan consistent with the City's Comprehensive Plan. (*Josh Williams*, 651/266-6659)

Commissioner Nelson shows some photos of the west side of Fairview near the proposed Carondelet Village project and pointed out that from what he has seen on the site plans, there is adequate space between the row of trees along Fairview Avenue and the property line to put a standard city sidewalk without disturbing the trees. He does not consider the proposed site plan to be in compliance with the Comprehensive Plan without some inclusion within the plan of a new sidewalk.

Donna Drummond, Planning Director, clarified that what is before the Planning Commission is not approval of the site plan but consideration of whether the redevelopment plan is consistent with the City's Comprehensive Plan. In the draft resolution there is a reference to the Transportation Chapter of the Comprehensive Plan and the importance of having sidewalks in an interconnected sidewalk system to serve the neighborhood. This project has already through site plan approval. However, if the Commission wanted to make the point to the HRA/City Council as they consider whether or not to grant TIF financing for this project, something could be added to the resolution to this effect. However, there may be some complications because of property boundaries.

Joan Trulsen, PED project manager for this project, said that the nuns own the property on the corner of Randolph and Fairview and that St. Catherine University owns the property where the dorms are farther south on Fairview. Neither of them were ever asked nor required to put in a sidewalk by the City. The Department of Safety and Inspections did not require it for the Carondelet project, and if it were required it would only go in front of their property and it would end at the property line and there would be no sidewalk. The City can not make them put a sidewalk in front of someone else's property.

Commissioner Schertler says that there are two issues here; one is the authority to approve or deny the redevelopment project request and whether it conforms with the Comprehensive Plan. He said that they could request that a new whereas be added to the resolution that City Council/HRA request the developer put in a sidewalk using the TIF proceeds and then not assess the property owners. It is completely within the HRA's right to require it.

Ms. Drummond said that the Planning Commission is not approving the redevelopment plan. What the Commission is being asked to consider is approving a resolution finding the redevelopment plan, which was prepared by the Housing and Redevelopment Authority, consistent with the City's Comprehensive Plan. It would be appropriate if the commission wishes

to consider asking the HRA/City Council to consider this issue, but clearly not making it a condition. The Planning Commission does not have the authority to put any kind of condition(s) on this project.

Commissioner Alton disagreed completely with putting a condition on their approval to require them to put in a sidewalk. He said that the Commission has had no input from the developer, the owner or the neighborhood and we would basically be putting a condition on a site plan that was already approved. However, we are not looking at a site plan, what we are asked to do is decide whether or not the plan is consistent with the Comprehensive Plan.

Commissioner Porter said on page two it states that staff consulted with the City Attorney's Office. She would like to have clarification about that.

Josh Williams, PED staff, said the question that was asked to the City Attorney's Office was whether or not it would be appropriate to request a sidewalk in front of both the Carondelet property as well as St. Catherine's, which would go all the way down to where the single family homes along Fairview begin and the answer was no.

Commissioner Wickiser said that at the Neighborhood Planning Committee meeting there was a lot of discussion with regards to this and the issue here is whether this is consistent with the Comprehensive Plan or not. He thinks it is not, because there isn't a sidewalk in front of the property and it would be ridiculous to require 75 feet of sidewalk along Fairview without the additional sidewalk going all the way down to the homes. So it is still not consistent with the Comprehensive Plan.

Commissioner Spaulding said the question is whether there could have been some specificity that all streets, or all arterial streets would be completed with sidewalks in this redevelopment plan. That would be general but is not specifically outlined in the present redevelopment plan. In that regard could we not find it out of compliance with the Comprehensive Plan at the present?

There was more discussion regarding putting in a sidewalk on Fairview in front of the Carondelet property and if this redevelopment plan is consistent with the Comprehensive Plan.

<u>MOTION</u>: On behalf of the Neighborhood Planning Committee, Commissioner Wencl moved to approve the resolution finding that the redevelopment plan is consistent with the City of Saint Paul's Comprehensive Plan.

AMENDMENT TO MOTION: Commissioner Schertler moved to amend the resolution to include the statement, projects in the Redevelopment Area or on nearby properties with frontage on Fairview Avenue between Randolph Avenue and Highland Parkway should provide for construction of public sidewalks, constructed to City standards, as is consistent with the Transportation chapter of the Comprehensive Plan. Commissioner Ward seconded the motion. The motion carried unanimously on a voice vote.

<u>MOTION</u>: Commissioner Wencl moved to approve the amended resolution and the Chair will send a letter on behalf of the Planning Commission to the City Council and Housing Redevelopment Authority. The motion carried unanimously on a voice vote.

Commissioner Wencl announced the items on the agenda for the next Neighborhood Committee

meeting on Wednesday, May 12, 2010.

# VII. Planning and Zoning Legal Issues – Presentation by Assistant City Attorney Peter Warner.

Peter Warner, Assistant City Attorney, distributed a handout – "An Introduction to the Legal Environment that Guides and Limits Planning and Zoning Decisions of the Planning Commission." Mr. Warner talked about what a planning commission is. Planning commissions are board of citizen volunteers who get together and make difficult decisions about land use and the future of the city and how it is going to look. Every municipality has a planning commission of some sort. Planning commissions exist because of Minnesota law that authorizes the creation of planning commissions and Saint Paul has done that. The Planning Commission was created in the City's administrative code. Saint Paul has two types of codes, a legislative code and administrative code. The legislative code is the regulatory code that sets the rules that say you have to keep your dog on a leash and you can't park in front of a fire hydrant and it is also where you find the zoning code. The administrative code is the body of law that governs how the City actually functions. The Saint Paul Planning Commission is created under Admin. Code § Chap.107. Pursuant to Admin. Code § 107.02(a), the powers and duties of the planning commission regarding planning and zoning are specifically spelled out. The commission shall serve as an advisory body to the mayor and city council on municipal planning matters as required by the Municipal Planning and Development Act, Minnesota Statutes, Section 462.351 and the Metropolitan Land Planning Act, Minnesota Statutes, Section 473.858.

Another thing that is important to understand is that planning and zoning are two different things. Planning is a visionary thing and zoning is a regulatory thing. It is important to understand the difference because when dealing with zoning and planning you are dealing with people's property rights. There are constitutional issues that have to be taken into consideration when making decisions. So zoning or planning authority is not unlimited but is regulated and defined by the state statutes. Together, the Municipal Planning Act (MPA) and the Metropolitan Land Planning Act (MLPA) exclusively define the structure, procedural authority and processes for comprehensive land use regulation and planning in Minnesota. This means that every zoning and planning decision made is subject to the legal limitations and requirements imposed under the MPA and the MLPA. Compliance with the MPA and MLPA means that each planning and zoning decision made must be factually informed and based on legal principles. Informed means that there is a factual basis for the decision. A principled one is based upon an analysis and application of the facts to a defined set of standards, goals, and procedures. The law classifies zoning and planning decisions into two different categories. 1) Legislative decisions - these are decisions to enact or amend an existing zoning ordinance or comprehensive plan component. The courts characterize legislative decisions as creating policies as opposed to the application of specific facts to an already existing standard expressed in the form of an existing ordinance or plan. 2) Quasi-judicial decisions are decisions that usually involve permit applications. The courts characterize these as quasi-judicial because there is an existing ordinance or plan setting forth a standard and the role of the decision maker is to apply the existing standard to the particular facts, the proposed use.

How do courts review zoning and planning decisions? The judicial standard of review for all planning and zoning decisions is the same - whether the decision was reasonable. Although the judicial standard of review of zoning decisions may be the same, the judicial scope of the review varies depending on the underlying nature of the decision. In contrast, quasi-judicial decisions are much more closely scrutinized by the courts. The courts will examine the applicable

ordinance to determine whether the facts demonstrate that the applicant had satisfied the criteria specified under the ordinance. If the ordinance criteria were satisfied, but the municipality denied the application, the denial will be deemed arbitrary and capricious and, as such, the permit should have been granted.

In order to avoid making a decision that is arbitrary and capricious the planning commissioners need to understand the nature of the matter being decided, they have to read the staff report and not make up their minds until given the complete picture. That means, depending on whether serving on the zoning committee or considering the application at the full planning commission meeting, what's needed is to understand the position of the applicant as well as the position of someone who might oppose an application. An informed decision cannot be made until both sides have had an opportunity to be heard.

Economic theory may have a place in planning decisions but it has little if any place in zoning decisions. If an applicant desires to build a bowling alley on a block with five other bowling alleys, and bowling alleys are permitted in that zoning district and the applicant satisfies the criteria for building a bowling alley, the applicant gets to build a bowling alley. There are also state and federal laws that preempt municipalities from making certain kinds of zoning decisions. These include the Federal Fair Housing Act, the Interstate Commerce Commission Termination Act, and the Cellular Communications Act.

Commissioner Smitten asked two questions, one relates to the findings of hardship and the other is that sometimes the comprehensive plan and zoning conflict and in those situations how is that navigated?

Mr. Warner said he would answer the second question first about the conflict between the comprehensive plan and the zoning ordinance. He said looking at the Metropolitan Land Planning Act there is a provision that says if your comprehensive plan and zoning ordinance conflict with one another municipality has to remedy its zoning regulation to come into conformance with the comprehensive plan. To Mr. Warner, being a lawyer, every question raised is always facts specific so he would look at it and make a determination legally whether or not there is a factual conflict. Then he would go to staff and say here is what I think about the legal aspects and what do you think about the planning aspect of it. Then we will come up with some sort of analysis of whether or not there is a conflict and if there is then we are legally bound to make that correction within nine (9) months. With respect to what is economic hardship that is always an interesting question, and generally it comes into play, usually with variances and sometimes with conversions of housing stock from a single family use to a duplex use. Economic hardship is a difficult thing to define and to Mr. Warner it is fact specific, because it depends on the application. Zoning involves people's property rights, so they have to be looked at on a case by case basis. Each and every application is different.

### VIII. Communications Committee

Commissioner Smitten had no report.

# IX. Task Force Reports

Donna Drummond, Planning Director, announced that on Tuesday, May 18<sup>th</sup> there will be an

open house for the Hamline, Western and Victoria Station Area plans	. The open house will held
at the Central Corridor Resource Center, 1080 University Avenue and	l a flyer will be sent out next
week with all the information.	

Χ.	Old Business	
XI.	New Business	
XII.	Adjournment	
	Meeting adjourned at 10:13 a.m.	
Sonja Planni City of	ded and prepared by Butler, Planning Commission Secretary ng and Economic Development Department, f Saint Paul	Approved
Respec	ctfully submitted,	Approved(Date)
Donna	Drummond	Marilyn Porter
Planni	ng Director	Secretary of the Planning Commission

PED\butler\planning commission\minutes\May 7, 2010